THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 13981, 21540, 21569, 21574, 21577, 21578, 21581, 21593, 21614, 21615, 21616, 21617, 21619, 21640 and 21723 of 2005

Common order:

The petitioners, erstwhile workers of the respondents-Singareni Collieries Company Limited, have filed the present writ petitions seeking a writ or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not retiring them on medical grounds, and instead retiring them under the voluntary retirement scheme by considering their requests belatedly and not providing employment to their dependants, as illegal, arbitrary and unconstitutional, and consequently direct the respondents to pay compensation/salary to the petitioners for the period from the date of their retirement under voluntary retirement scheme till the date they on which they would have retired in the normal course on attaining the age of superannuation.

The learned counsel for the petitioners submitted that the petitioners while working with the respondents were declared medically unfit, and pursuant thereto, they sought retirement on medical grounds, which provided for payment of Rs.3,00,000/- towards compensation as well as dependant employment. However, the respondents instead of retiring the petitioners on medical grounds, have advised them to take retirement under the voluntary retirement scheme, which provided for payment of Rs.2,00,000/- towards compensation as well as dependant employment. Accordingly, as advised by the respondents, the petitioners applied for retirement under the voluntary retirement scheme, but the respondents instead of

acting on their applications immediately, have considered them belatedly, and because of such belated consideration, the dependants of the petitioners had lost the opportunity of being provided employment, and in lieu of dependant employment they were paid another Rs.2,00,000/-. He submitted that had the petitioners been retired on medical grounds, the respondents apart from providing dependant employment would have paid Rs.3,00,000/- towards compensation to the petitioners, which is Rs.1,00,000/- more than what the petitioners were paid under the voluntary retirement scheme. He further submitted that the petitioners had taken retirement under the voluntary retirement scheme, as advised by the respondents, in the fond hope that their dependants would be provided dependant employment, and in which case, they would enjoy certain benefits, like quarters, medical treatment etc., but the respondents by paying another Rs. 2,00,000/- to the petitioners, have not only denied dependant employment to the petitioners, but have also denied them certain benefits, which accompany their service. Hence, he prayed that the writ petitions be allowed with appropriate directions.

Refuting the allegations, the respondents filed detailed counter. The learned Standing Counsel for the respondents reiterating the counter averments submitted that the petitioners applied for retirement under the voluntary retirement scheme, whereunder the petitioners apart from being paid Rs. 2,00,000/- towards compensation, were entitled to dependant employment to one of their dependants as Badli Filler. He submitted that as there were no vacancies of Badli Fillers, the names of dependants of the employees, who have taken voluntary retirement, including the names of the dependants of the petitioners were included in the panel, for consideration of their cases, as and when vacancies of Badli Fillers arose.

He submitted that as the matters stood thus, a Memorandum of Settlement dated 06.06.1998 was entered into by the respondents with five JBCCI Unions. In terms of the said Memorandum of Settlement, employees who had taken voluntary retirement, were given the option either to receive payment in lumpsum equivalent to 100% average basic, FDA, VDA and SDA calculated on the basis of ex-employees earnings for 24 months preceding to the cessation of employment under voluntary retirement for a period of 24 months or dependant employment to their children. Accordingly, by notice dated 02.05.1999, the respondents informed the petitioners about the common seniority list of the dependant employees, and the place at which the names of their dependants stand in the list, and requested the petitioners either to exercise their option for payment of lumpsum amount or dependant employment to their children. While so, a Memorandum of Settlement dated 08.03.2002 was entered into by the Unions with the respondents in the presence of the
Hon'ble Chief Minister, whereunder, it was agreed that the employees, whose children are wait-listed for dependant employment, in full and final settlement of the voluntary retirement scheme, as on the said date, will be offered compensation of Rs.2,00,000/- or 24 months wages last drawn by the ex-employee, whichever is more. In terms of the said Memorandum of Settlement, the petitioners submitted their applications seeking compensation of Rs.2,00,000/- in lieu of dependant employment. He submitted that the petitioners having claimed the benefits as per the Memorandum of Settlements entered into by representatives of the Unions with the Management, now in contravention thereof, cannot contend that had they been retired on medical grounds, they would have got much better benefits than what they were paid to them under the voluntary retirement scheme. Hence,

he prayed that the writ petitions be dismissed.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents.

Though the petitioners contend that they sought to retire them on medical grounds, which provided for better benefits, i.e. Rs.3,00,000/- towards compensation and dependant employment to their children, the fact remains, it is the case of the respondents that since the petitioners were not found medically unfit, they were not entitled to seek retirement on medical grounds. It is their specific case the petitioners sought retirement under the voluntary retirement scheme, and acceding to such request of the petitioners, they were retired under the voluntary retirement scheme, which provided for payment of Rs.2,00,000/- and dependant employment.

Though under the voluntary retirement scheme, dependant employment was to be provided to one of the children of the employee, it is the specific case of the respondents that they could not provide dependant employment to some of the children of the employees, such as the petitioners, because of non-availability of vacancies, and such of the children of the employees, who were not provided dependant employment, were kept in the waiting list. It is their further case of the respondents, which is admitted to by the petitioners that as the waiting list was not being operated due to non-availability of vacancies, after long discussions before the Hon'ble Chief Minister, a tripartite agreement in the form of a Memorandum of Understanding was entered by the management of the company with five JBCCI Unions before the Labour Commissioner under Section 12(3) of the Industrial Disputes Act, 1947 on 06.06.1998. In the said Memorandum of Understanding, it was *inter alia*, agreed to as follows:

1. In view of the discussions before the Hon'ble Chief Minister of A.P. on 24th May, 1998 with JBCCI Unions and subsequent Tripartite Negotiations,

Management has agreed to provide employment to the cases of dependants of employees on account of death and medical invalidation (Board Medical Unfitness) as on 31.12.1997 at 100 per month as approved by the Hon'ble Chief Minister.

2. 575 V.R.S. dependant cases out of 1150 pending as on 31.12.97 are to be given employment in a period of two years at the average rate of 30 per month as per seniority.

3. The balance of the VRS dependants as on 25th May, 1998 will be given employment subject to availability of the vacancies or they will be offered lumpsum amount equivalent to 100% of the average basic + FDA, VDA, SDA calculated on the ex-employees earnings for 24 months immediately preceding the date of cessation of employment under VRS for a period of 24 months in lieu of employment.

From a reading of the above, it becomes clear that the management agreed to provide employment to the cases of dependants of employees on account of death and medical invalidation (Board Medical Unfitness) as on 31.12.1997 at 100 per month as approved by the Hon'ble Chief Minister; it further agreed that 575 VRS dependant cases out of 1150 pending as on 31.12.1997 would be given employment in a period of two years at average rate of 30 per month as per seniority; and in the case of remaining employees, who are not provided dependant employment, as on 25.05.1998, it was agreed to provide employment subject to availability of vacancies or they will be offered lumpsum amount equivalent to 100% of the average

basic + FDA, VDA, SDA calculated on the ex-employees earnings for 24 months immediately preceding the date of cessation of employment under VRS for a period of 24 months in lieu of employment

The children of the petitioners and similarly placed persons, admittedly, were not provided dependant employment in terms of the above Memorandum of Settlement, and in such circumstances, another Memorandum of Settlement was arrived at between the management and the Unions, wherein it was agreed as follows:

As directed by the Hon'ble Chief Minister of A.P., it is agreed by the management that in full and final settlement of the company's voluntary retirement scheme, all waiting dependants as on date will be offered monetary compensation of

Rs.2 lakhs or 24 months wages last drawn (Basic + DAs) by the ex-employee immediately preceding the date of cessation of employment as mentioned in MOS dated 06.06.1998, whichever is more, in lieu of dependant employment.

In terms of the above Memorandum of Settlement, it is the case of the respondents that the petitioners, whose children were not provided dependant employment, was offered Rs.2,00,000/- as compensation in lieu of dependant employment, and in fact, the petitioners admit having received the same. The petitioners having taken retirement under the voluntary retirement scheme, and they having received the monetary benefits provided thereunder, including compensation *in lieu of* dependant employment, in terms of the Memorandum of Settlements entered into by the Unions with the management, which represented the grievance of the petitioners, now cannot contend that had they been retired on medical grounds they would have been paid much better benefits that what they were paid under the voluntary retirement scheme or that had their applications for retirement under the voluntary scheme been processed by the respondents early, their children would have stood a chance to secure dependant employment, as they would have been placed high in the waiting list, and consequently, they would have enjoyed the benefits that flow from such employment.

The writ petitions are devoid of merit, and they are accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 14th December, 2007.
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